HON'BLE Dr. JUSTICE G. YETHIRAJULU

W.P.No.19821 of 2002

Dated this the 24th day of December, 2007

Between:

Yakoob Hussaini Khaiser

… Petitioner

AND

The Chief Executive Officer,
A.P. State Wakf Board, Hyderabad
and another … Respondents

HON'BLE Dr. JUSTICE G. YETHIRAJULU

W.P.No.19821 of 2002

ORDER:

This Writ Petition has been filed by the petitioner seeking to declare that the action of the first respondent in not initiating any action under Section 54 of the Wakf Act, 1995 against the encroachers of the lands in Survey No.431, which is attached to the Wakf Institution viz., Kohe-e-Moula Ali situtated at Malkajgiri Mandal Ranga Reddy District, as illegal, arbitrary, capricious, *mala fide*, dereliction from duty and contrary to the statutory provisions of the Wakf Act.

2) The petitioner is contending that when the Wakf Board was trying to evict the second respondent, the second respondent filed W.P.No.11941 of 2000 and this Court passed an order directing the Wakf Board to take steps to evict the second respondent according to law. But after the directions of this Court in W.P.No.11941 of 2000, the Wakf Board did not initiate any action. In the counter affidavit, they mentioned that the action has been initiated, but no progress has been reported.

3) Section 54 of the Wakf Act, 1995 reads as follows:

"**54. Removal of encroachment from wakf property**:- (1) whenever the Chief Executive Officer considers whether on receiving any complaint

or on his own motion that there has been an encroachment on any land, building, space or other property which is wakf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-seciton (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the wakf.

(4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-seciton from instituting a suit in a Tribunal to established that he has right, title or interest in the land, building, space or other property;

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the mutawalli of the wakf or by any other person authorized by him in this behalf."

4) In the light of the above provision, I am inclined to direct the first respondent to take necessary steps according to law and report the progress to the petitioner within eight weeks from the date of receipt of copy of this order, failing which the petitioner is at liberty to take further steps in accordance with law.

5) Accordingly the Writ Petition is ordered. No order as to costs.

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Dr.G. YETHIRAJULU, J

Date: 24-12-2007
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